

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
3 WESTERN DIVISION
4 CASE NO. 1:16-cv-01075

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8 FREDERICK HOLLOWAY, -vs- KINGS DODGE, INC.,
9 et al.,

10 Plaintiff, Defendants.
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14 Deposition of ROBERT C. REICHERT, a witness
15 herein, taken by the Plaintiff as upon
16 cross-examination and pursuant to the Federal Rules of
17 Civil Procedure and Notice and agreement of counsel as
18 to time and place and stipulations hereinafter set
19 forth at the offices of Cors & Bassett, LLC,
20 PNC Center, 201 East Fifth Street, Suite 900,
21 Cincinnati, Ohio, on Monday, August 7, 2017, at
22 1:53 p.m., before Pamela L. Jackson, a Notary Public
23 within and for the State of Ohio.
24

25 - - -

1 I N D E X

2 Witness: Page:

3 ROBERT C. REICHERT

4

5 Cross-Examination
6 By Mr. Butler, Esq. 5

7 Plaintiff's Exhibit No.: Page Marked:

8 17 26
9 (Kings Dodge, Inc., Job Description For
Salesperson)

10 18 30
11 (Defendant's Responses To Plaintiff's First Set
Of Document Requests)

12 19 45
13 (Email To jeepbigyella@aol.com And Others From
Rachel Lemmel Dated 12/16/14)

14 20 54
15 (Position Statement Of Kings Dodge, Inc.)

16 21 62
17 (List Of Employees)

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1 APPEARANCES:

2 For the Plaintiff:

3 Brian J. Butler, Esq.
4 of
5 Mezibov Butler
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9 For the Defendants:

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13 PNC Center
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15 Cincinnati, Ohio 45202
16 Phone: 513.852.8200

17 Also Present:

18 Frederick Holloway

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1 S T I P U L A T I O N S

2 It is stipulated by and between counsel
3 for the respective parties that the deposition of
4 ROBERT C. REICHERT, a witness herein, called as upon
5 cross-examination by the Plaintiff, may be taken at
6 this time and place pursuant to the Federal Rules of
7 Civil Procedure and Notice and agreement of counsel as
8 to time and place of taking said deposition; that the
9 deposition was recorded in stenotypy by the court
10 reporter, Pamela L. Jackson, and transcribed out of
11 the presence of the witness; and that said deposition
12 is to be submitted to the witness for his examination
13 and signature, and that signature may be affixed out
14 of the presence of the Notary Public.

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1 ROBERT C. REICHERT
2 of lawful age, a witness herein, being first duly
3 sworn as hereinafter certified, was examined and
4 deposed as follows:

5 CROSS-EXAMINATION

6 BY MR. BUTLER:

7 Q Good afternoon, Mr. Reichert. I'm
8 Brian Butler. We have met a few times.

9 Could you please state your full
10 name for the record?

11 A Certainly. It's Robert Charles
12 Reichert, R-e-i-c-h-e-r-t.

13 Q Okay. Mr. Reichert, have you had
14 your deposition taken before?

15 A I have.

16 Q Okay. So you know the ground
17 rules. If you don't understand the question, let me
18 know. Do your best to give yeses and noes versus head
19 nods or uh-huhs. Let me finish my question before you
20 start giving your answer.

21 Is it all right if I call you Bob?

22 A Yes, certainly.

23 Q Okay. Now, Bob, you have a law
24 degree; correct?

25 A Yes.

1 Q Where did you do your undergrad
2 education?

3 A University of Cincinnati.

4 Q Okay. And where did you get your
5 law degree?

6 A At Southland University in
7 Pasadena, California.

8 Q Did you practice law at any point?

9 A Only for my company. I never have
10 taken clients -- Well, I had a cousin that got in
11 trouble once -- but other than that, no.

12 Q What year did you get your law
13 degree?

14 A 1984.

15 Q All right. Is your law license
16 active?

17 A Yes.

18 Q Have you done any training or taken
19 any courses in Labor or Employment Law?

20 A Yes.

21 Q What kind of courses have you
22 taken?

23 A Most of the CLE courses that I take
24 every year to fulfill the requirements of Ohio and
25 California are Labor/Employment courses.

1 Q Have those courses focused on the
2 Americans With Disabilities Act and the
3 Family And Medical Leave Act?

4 A I wouldn't say they focused on, but
5 they're certainly included in the courses.

6 Q Okay. I want to ask you a little
7 about Kenwood Dealer Group. When did it form?

8 A 1975.

9 Q All right. Were you a part of it
10 when it formed?

11 A Yes.

12 Q All right. Who are your partners
13 in it currently or co-shareholders or however it's
14 organized?

15 A My son, Steven Reichert,
16 Jeffrey Carmichael, Daniel Mercurio, M-e-r-c-u-r-i-o,
17 Allen D. Vaught, V-a-u-g-h-t, Robert Schoenhof.

18 Q Okay. And have they all -- Well,
19 are there partners who used to -- people who used to
20 be partners that are no longer partners?

21 A Yes.

22 Q And have any of those departed
23 within the last, say, five years?

24 A Yes.

25 Q All right. Who are those?

1 A Gerald Carmichael and
2 Lawrence Feldhaus.

3 Q Who was the Carmichael you said
4 that is currently a shareholders?

5 A Jeffrey Carmichael.

6 Q Okay.

7 A And Mark Pittman. I'm sorry.
8 That's a departed shareholder, Mark Pittman.

9 Q Is it a corporation? Is it an LLC?

10 A Corporation.

11 Q Are you the majority shareholder?

12 A Yes.

13 Q What roles do you hold for
14 Kenwood Dealer Group? What role do you perform?

15 A House Counsel.

16 Q Any others?

17 A Not really.

18 Q What about in the last five
19 years -- Did you hold any other titles?

20 A I have never held a different
21 title. Maybe my job description changed slightly.
22 The General Managers of the dealerships used to report
23 to me. Now they report to my son. He has taken over
24 the -- more of the business end, the sales and --
25 sales and advertising.

1 Q Who is the President of
2 Kenwood Dealer Group?

3 A Currently it's my son.

4 Q Okay. And were you formerly the
5 President?

6 A Yes.

7 Q And when did you cease being the
8 President?

9 A Last January.

10 Q Okay. Kings Dodge -- How long has
11 Kenwood Dealer Group owned Kings Dodge?

12 A Kenwood Dealer Group doesn't own
13 any dealerships. Kings Dodge is an Ohio corporation,
14 a freestanding Ohio corporation.

15 Q What is the relationship between
16 Kenwood Dealer Group and Kings Dodge?

17 A Kenwood Dealer Group has a contract
18 with all of the dealerships that have common ownership
19 and provides management services --

20 Q Okay.

21 A -- bookkeeping, payroll, accounts
22 receivable, payable, that sort of thing.

23 Q How long has Kenwood Dealer Group
24 had a contract to run or operate Kings Dodge?

25 A Since its existence, since its

1 beginning, which would be 1988.

2 Q Do you have an ownership interest
3 in Kings Dodge?

4 A Yes.

5 Q It's now Kings Dodge Chrysler Jeep
6 -- Am I missing something -- Ram?

7 A That would be a DBA. The name of
8 the corporation is still Kings Dodge.

9 Q Okay. But the dealership sells all
10 four of Chrysler's products?

11 A Correct.

12 Q How long has that been the case?

13 A I believe it was 2007 or 8 when
14 Chrysler required the consolidation of all their
15 brands under one roof.

16 Q Was there -- Did you previously
17 have an ownership interest in a Jeep or Chrysler or --
18 I guess the Ram didn't exist then -- but Jeep or
19 Chrysler dealership?

20 A Yes.

21 Q And did you merge those with
22 Kings Dodge?

23 A Yes.

24 Q All right. What level of
25 involvement do you have in the day-to-day operations

1 of Kings Dodge?

2 A Not a lot. My involvement would be
3 in the hiring process, discipline, any legal issues
4 that come up, any issues with the manufacturer. I
5 typically deal with the manufacturer's representatives
6 in the sales and franchise end but not in parts and
7 service.

8 Q Okay. Are you involved in
9 termination decisions?

10 A Yes, usually.

11 Q What about whether or not to grant
12 a leave of absence for an employee -- Is that
13 something you are involved in?

14 A Not at the outset. That would
15 typically be done by our HR lady.

16 Q How about providing accommodations
17 for disabilities -- Is that something you typically
18 are involved in?

19 A Yes.

20 Q How many salespeople does
21 Kings Dodge employ? I understand it fluctuates, but
22 do you have a rough average?

23 A Probably 13.

24 Q What are the duties of a
25 salesperson at Kings Dodge?

1 A Greet the customers that come into
2 the dealership, show them the vehicles, negotiate
3 prices, have their used car appraised, and now the
4 duties have morphed into responding to inquiries
5 through any type of electronic media which could be
6 Facebook, email, Twitter, Pinterist, whatever other
7 means there may be the salespeople either respond
8 directly or interact through what we call the BDC
9 which is the Business Development Center.

10 Q And what is that? Is that a
11 software?

12 A No. It's a group of people -- And
13 this is actually new to us. It was previously a few
14 people in each dealership who did nothing but respond
15 to electronic inquiries, whatever the source. In the
16 last year and a half we moved them all together into
17 the headquarters building so that there's about 20 of
18 them now that respond for all the dealerships.

19 Q When you say "the headquarters
20 building", you mean Kenwood Dealer Group?

21 A Right.

22 Q And where is that building located?

23 A It's at 4780 Socialville-Foster
24 Road in Mason, Ohio.

25 Q Is that near the Kings Automall?

1 A It's about three miles away.

2 Q What percentage of a salesperson's
3 job is walking around in the lot versus sitting at a
4 desk and answering phone calls, returning emails,
5 doing paperwork?

6 A That really would be difficult to
7 say. It truly depends on how many face-to-face
8 contacts the customer's going to have. It would be
9 very difficult. It certainly is a necessary part, but
10 it could be on any given day 10 percent or 80 percent.

11 Q Okay. Now, say I walk into
12 Kings Dodge. Is there a method for assigning a
13 salesperson to me if I don't have an appointment or is
14 it whoever grabs the customer that comes in the door
15 first?

16 A Whoever grabs the customer.

17 Q Are leads provided to the sales
18 staff of any kind?

19 A Well, leads would come in typically
20 through email or Facebook or Twitter, again any one of
21 the social media sites, and now as of a year and a
22 half ago they go directly to the BDC, but prior to
23 that they would go to the salespeople or if the
24 dealership had its own little BDC it would go there
25 first.

1 Q So if someone gets sent to the BDC,
2 that means that person has inquired through Facebook
3 or somehow online about maybe wanting to buy a
4 Dodge Charger. How does that person then get assigned
5 to a salesperson at Kings Dodge?

6 A Today?

7 Q Correct.

8 A The BDC rep will respond to that
9 inquiry and try to set up an appointment, and then the
10 appointment would be made with one of the salespeople
11 for the customer that has inquired electronically to
12 meet a salesperson at the dealership.

13 Q How is the salesperson decided --
14 selected for that meeting?

15 A Randomly.

16 Q Is there a list that you go 1
17 through 13 or whatever --

18 A The BDC people have a list of all
19 salespeople and they'll assign -- There might be -- In
20 some cases there might be a truck specialist at some
21 dealerships, but typically it's just a random rotating
22 selection.

23 Q Prior to the BDC existing how was
24 it handled at Kings Dodge? You said some dealerships
25 had their own BDC inside. Others had maybe an

1 Internet Sales Manager. How did Kings Dodge operate?

2 A Well, years ago -- And I'll go back
3 maybe seven or eight years -- the salespeople
4 themselves answered Internet leads, and then as the
5 Internet leads increased each dealership created its
6 own little group of people to answer those leads.

7 Q And prior to the BDC would those
8 individuals be the salespeople for the cars ultimately
9 or would the leads be assigned to a salesperson?

10 A I am not sure I understand what
11 you're saying.

12 Q Well, if there was an Internet
13 Sales Manager, for example, at Kings Dodge and a lead
14 came in through the website or through Facebook, how
15 would that lead then be -- would that lead then be
16 assigned to a salesperson or would the Internet Sales
17 Manager handle the sale?

18 A Well, the Internet Sales Manager
19 would respond to the lead and depending on how the
20 interaction took place -- If the Internet lead was,
21 you know, a product inquiry and the answer was
22 satisfactory to the customer and there was no more
23 follow-up, then nothing more would happen, but if the
24 customer would say, "Okay. I want to come in and see
25 that car," then they would give it to a salesperson.

1 Q Okay. And was that done
2 randomly --

3 A Yes.

4 Q -- at that point?

5 A Yes.

6 Q All right. CRM software, what is
7 that?

8 A Well, it's Customer Relations
9 Management. It again has progressed rapidly over the
10 last 10 years. Today it does virtually everything
11 that a Sales Manager may have done in the past,
12 including calculating leases, what they call a mining
13 feature where the software looks back at all the
14 customers that purchased cars from that dealership and
15 if the salesperson wants to contact everybody that
16 bought a Jeep in the last four years, you know, he can
17 push a button and get all those names.

18 It will tell you -- There's a
19 feature called equity mining. It will look back at
20 all the customers and it will calculate approximately
21 how much equity they have in their vehicle, if any,
22 or, you know, how many payments they have left to go.
23 It will also know how many miles are on the car if
24 they come in there for service. It sends out
25 reminders for the salespeople to call people, follow

1 up anybody that the salesperson enters into the CRM.
2 There's a whole list of functions that it performs.
3 It kind of takes the salesperson by the hand and leads
4 them through the process. It's a very sophisticated
5 sales tool that didn't exist, you know, 10 years ago.

6 Q All those features that you're
7 describing, are those features of the current --

8 A Yes.

9 Q -- CRM software?

10 A Yes.

11 Q Do all of the dealerships owned by
12 you and that are operated by the Kenwood Dealer Group
13 use the same software?

14 A We do now, yes.

15 Q And that's called DriveCentric?

16 A Yes.

17 Q Prior to that did all of the
18 dealerships use the same software?

19 A No.

20 Q All right. How many different
21 types of software were used at different -- Well, how
22 many dealerships do you own?

23 A 12.

24 Q 12.

25 Are there any other dealerships

1 that are operated by Kenwood Dealer Group that you
2 don't own?

3 A No.

4 Q So of those 12 dealerships, how
5 many different CRM software -- different softwares
6 were there in use before DriveCentric came in?

7 A I don't know for sure, but I would
8 say four or five.

9 Q Okay. Is DriveCentric more user
10 friendly than some of the previous softwares?

11 A No, it's probably not more user
12 friendly. It's much more sophisticated, performs a
13 lot more of the sales function. The old software
14 wouldn't calculate leases, wouldn't do any of the
15 mining functions. This is advanced -- Like all
16 electronic things, it's advanced, you know,
17 tremendously just in the last two or three years.

18 Q Do you know how to use
19 DriveCentric?

20 A No, I do not -- I should say, "I
21 don't use it." I can probably struggle through, but
22 it wouldn't be something that I would ever use.

23 Q Okay. So you don't know if it's
24 easy to use or hard to use or easier or harder than
25 AutoBase?

1 A Well, obviously I do know --

2 Q Okay.

3 A -- because the people that do use
4 it talk about it. We talk about it in management
5 meetings. And those who do use it every day make
6 those comments in our meetings that, you know, it's
7 not extremely difficult to use, but it's considerably
8 more difficult than the old AutoBase.

9 AutoBase was the most primitive
10 original CRM that was actually -- And these are
11 remarks that I get from other managers -- or from the
12 managers that AutoBase was used because it was user
13 friendly. It was so easy to use, but it really didn't
14 do that much.

15 Q Okay. I want to ask you a little
16 bit about compensation.

17 How are salespeople at Kings Dodge
18 compensated?

19 A It's a draw against commission, so
20 there's a -- We're on a two-week pay cycle, so they
21 receive a draw amount that's typically slightly above
22 minimum wage and at the end of the month they settle
23 up whatever the commissions, the total commissions,
24 earned during the month are, that number is paid to
25 them and the draw is subtracted and they get the

1 remainder.

2 Q Okay. If the salesperson doesn't
3 make the draw for the month, does the salesperson owe
4 the money back?

5 A No.

6 Q Do all of the salespeople at
7 Kings Dodge earn the same draw?

8 A I believe they do. I am not sure.

9 Q Does Kings Dodge regularly
10 terminate low performers?

11 A Define "low performer".

12 Q Does Kings Dodge have a set number
13 of cars per month that the salespeople must sell?

14 A No. There's no written policy for
15 a set number, but a top performer would be someone who
16 sells 20 or more. When you get down in the single
17 digits, they would terminate somebody probably if they
18 were at 5 or 6.

19 Q Okay.

20 A It also depends somewhat on, you
21 know, your needs. You don't wipe out the whole sales
22 force. You still have to keep some people there.

23 Q Okay. Are you aware that Chrysler
24 certifies salespeople?

25 A My knowledge of Chrysler certified

1 salespeople, certification indicates that the
2 salesperson has passed a product knowledge test or has
3 achieved a certain level of product knowledge. It has
4 nothing to do with sales volume.

5 Q Okay. Are you familiar with --
6 Does Chrysler convey awards on to salespeople for
7 selling a certain number of vehicles?

8 A Not that I'm aware of.

9 Q Any other bonuses or anything else
10 like that that Chrysler gives to salespeople?

11 A Well, there's some prizes that are
12 awarded on the spin situation that Mr. Holloway talked
13 about. You sell a certain number of cars, you get a
14 spin, and you get to electronically spin a wheel and
15 you get a prize, but it's not a bonus. It's a random
16 incentive, I guess, might be the best way to describe
17 it.

18 Q How many cars does the salesperson
19 need to sell to spin?

20 A None. If you sell a certain car
21 you -- It will vary. All manufacturers do. Maybe
22 they will put a spin on some slow selling models.

23 Q I see.

24 A Let's say the Chrysler 200. If you
25 sell one of those, you get a spin, or it might be on

1 some other model. It varies from time to time, month
2 to month. It's not a consistent program.

3 Q All right. How often did you
4 interact with Rick Holloway when he was at
5 Kings Dodge?

6 A Hardly ever. I interacted with him
7 on a lawsuit that the customer brought against us
8 where he was the salesperson.

9 Q Okay. Tell me about that?

10 A The customer alleged that when he
11 came to the lot to buy a used car he said to
12 Mr. Holloway that he wanted a vehicle to tow his boat.
13 The testimony at the deposition from the customer was
14 that he didn't tell Mr. Holloway how big the boat was,
15 how much it weighed, gave him no specifications, and
16 Mr. Holloway presented a car and said, "This car will
17 tow your boat."

18 And there was some more testimony
19 that the customer was very indefinite about, you know,
20 what happened, but there was some more testimony that
21 led Mr. Holloway to believe that the boat was probably
22 like an aluminum rowboat or a small craft of some
23 sort, a small light boat -- I can't remember the exact
24 description -- but it turned out that the car couldn't
25 tow the boat and so the customer sued us.

1 Q Did that resolve in a fashion that
2 led you to think less of Mr. Holloway as a
3 salesperson?

4 A I guess I could say I didn't think
5 any more of him.

6 Q Did Kings Dodge have to pay out a
7 sum of money to resolve the matter?

8 A We did.

9 Q Was it substantial?

10 A I don't remember.

11 MR. CORNETT: All right. That's a
12 fair point.

13 A I really don't remember.

14 Q So it couldn't have been that
15 substantial?

16 A It didn't bankrupt us; okay.

17 Q Was Mr. Holloway one of the longest
18 tenured salespeople at Kings Dodge at the time he
19 left?

20 A Pretty much. He was there off and
21 on as you heard from the testimony. He was there off
22 and on for 15 years.

23 Q Are you aware of him leaving for
24 any substantial amount of time?

25 A I think the longest might have been

1 a month or six weeks.

2 Q Okay. Did you find him to be
3 pleasant when you interacted with him?

4 A Oh, yeah. Mr. Holloway is a nice
5 man.

6 Q Did he get along with salespeople
7 there?

8 A As far as I know he did. I
9 wouldn't have any way to really know that.

10 Q All right. At the time
11 Mr. Holloway was there I understand Kings Dodge was
12 using AutoBase. Did each salesperson have its own
13 customer list in that software or was that maintained
14 separately?

15 A Well, both. The customer list in
16 AutoBase was nothing more than what the salespeople
17 put in there. AutoBase didn't draw from our DMS
18 system. It wasn't that sophisticated.

19 Q What is the DMS system?

20 A The Data Management System, in
21 other words, all the data for the dealership.

22 Q Prior sales, prior customers?

23 A Prior customers, accounting,
24 everything. The DMS system is all the data for
25 operating the dealership including customer lists,

1 service records, sales records, everything.

2 Q But in AutoBase did each
3 salesperson have his or her own list of customers or
4 was that list shared with all the salespeople?

5 A Well, I don't know that there was a
6 list per -- for each salesperson. When a salesperson
7 would enter a name into AutoBase -- The best thing you
8 could say about AutoBase was that if the salesperson
9 entered a customer name and put some notes in there or
10 showed this customer a certain car and then the next
11 day the customer came back and the salesperson was
12 off, another salesperson could go in there and pick up
13 where No. 1 left off.

14 Q Okay. Are you aware of any
15 warnings or anything like that given to Mr. Holloway
16 concerning his performance in the last five years he
17 was there?

18 A Not in the last five years. There
19 were some prior to that.

20 Q All right. Are you aware that he
21 had hip problems?

22 A I was aware when he went out for
23 surgery, yes.

24 Q Okay. Prior to that you were not
25 aware of any hip problems Mr. Holloway had?

1 A No.

2 Q All right.

3 MR. BUTLER: Mark this -- We'll
4 just continue -- as 17.

5 (Plaintiff's Exhibit 17 was marked
6 for identification.)

7 BY MR. BUTLER:

8 Q This is a job description that was
9 provided among the documents Kings Dodge produced. Is
10 this the job description that pertained to
11 Mr. Holloway's job?

12 A It's dated 1997. I really don't
13 know if there's been a revision since then or not.

14 Q Okay. Does this appear accurate to
15 you?

16 A For 1997, yes.

17 Q But you're not aware of any
18 subsequent job description?

19 A It wouldn't come to my attention.

20 MR. CORNETT: This is a
21 housekeeping matter. I mean do you really
22 want to start 17 or should we start
23 Plaintiff's 1?

24 MR. BUTLER: I like just having one
25 set of exhibits because they're easier to

1 refer to and you're not trying to track down
2 which deposition it came from, but it's up to
3 you.

4 MR. CORNETT: Okay. It intimates
5 there were 16 prior exhibits for Plaintiff
6 and there weren't, but whatever. I'm okay.
7 It doesn't matter.

8 BY MR. BUTLER:

9 Q Commercial customers -- Is there a
10 separate sales team that deals with commercial
11 customers or do the regular sales staff deal with
12 commercial lead customers?

13 A I think it kind of depends. If you
14 define a commercial customer as a small business like
15 a plumber, they would -- that person would deal with a
16 sales -- regular salesperson. A fleet would
17 definitely deal with a specialist.

18 Q Does Kings Dodge have a specialist?

19 A There is a fleet person, yes.

20 Q Okay. And who is that?

21 A I would have to look at the list.
22 I can't remember his name.

23 Q Does Bob Cook sound right?

24 A That sounds correct, yes.

25 Q We previously looked at an exhibit

1 that was marked as 12 in Mr. Holloway's deposition.

2 It's a list of individuals who work at Kings Dodge; is
3 that correct?

4 A Yes.

5 Q And it says "Answer To Number 13".

6 Is that referring to an Interrogatory that
7 Mr. Holloway served on Kings Dodge?

8 A Yes.

9 Q Did you prepare this document?

10 A Yes.

11 Q Did anyone help you prepare it?

12 A My assistant did the typing.

13 Q Okay. But who did the
14 calculations?

15 A I did.

16 Q All right. From what did you draw
17 the data?

18 A This data was drawn from a monthly
19 report that we produce called the Top Gun Report and
20 that report lists every salesperson in each dealership
21 and the number of cars that they sold that month.

22 Q Okay. Would it be easy to produce
23 the Top Gun Report for Kings Dodge for the period that
24 Mr. Holloway worked there?

25 A Yes.

1 Q All right. Is that something that
2 you can do?

3 A Yes.

4 Q All right. Are there any kinds of
5 sales that would be exempted from Top Gun Reports?

6 A Well, the only misleading thing
7 about the Top Gun Report -- And I could give it to you
8 one of two ways. I can give you a month by month or I
9 can give you the annual report. These numbers were
10 taken from the annual report. But the annual report
11 will include people who have not -- did not work the
12 entire 12 months, those that were hired, say, mid
13 year, so they will appear to be underperforming when,
14 in fact, they may actually be very, very good
15 salespeople.

16 Q And this was taken from the annual
17 report?

18 A Right. These numbers were all
19 taken from the annual numbers.

20 Q And for what period of time did you
21 calculate?

22 A This would be for -- I would have
23 to look at Question No. 13, but I think it was -- I
24 think you asked for three or four years, whatever
25 period of time --

1 Q We could take a look --

2 A -- you asked for on the

3 Question 13.

4 MR. BUTLER: We will mark that as

5 18.

6 (Plaintiff's Exhibit 18 was marked

7 for identification.)

8 BY MR. BUTLER:

9 Q I think it was 2011 to present.

10 A That sounds right. (Reviewing
11 document.) Yes, it is.

12 Q All right. And you just took the
13 year end number for each person for 2011, 12, 13, 14,
14 15, and 16 and averaged them or how did you --

15 A No. We only went to 2015, I think.
16 Yeah, we went for the time that Mr. Holloway was
17 there.

18 MR. BUTLER: Okay. I think I would
19 like to see the monthly reports.

20 MR. CORNETT: Sure.

21 THE WITNESS: Sure. No problem.

22 BY MR. BUTLER:

23 Q When you calculated these numbers
24 did you take into account time away from the
25 dealership such as medical leave?

1 A No, I did not. I simply took the
2 year end totals and divided them by 12.

3 Q Okay. So if Mr. Holloway was away
4 for two plus months in 2014, that year end for 2014
5 wouldn't accurately reflect his monthly sales since it
6 accounted for his total number of sales over the year
7 divided by 12; correct?

8 A Well, no. For 2014 I took the
9 number of sales he had through August.

10 Q Through August?

11 A Well, whatever the month was that
12 he -- When did he leave -- October. I'm sorry.

13 Q Okay.

14 A So I used the 10 -- a 9 or 10-month
15 divisor.

16 Q Well, you just said that the yearly
17 reports were misleading. Did you use the monthly
18 report to figure that out?

19 A No. I took the year end number and
20 instead of dividing his by 12 I divided by the number
21 of months he was there.

22 Q Okay.

23 A And let me clarify the misleading.
24 The yearly reports are only misleading in the sense
25 that if you look at the rank where a person lands in

1 the list -- If there's a 15-person list and someone is
2 No. 6, that doesn't necessarily mean they were the
3 sixth best salesperson because many of the people
4 below them may not have been there all year.

5 Q Okay. I see.

6 So you helped draft the responses
7 to these Interrogatories; is that correct?

8 A I did.

9 Q And you signed the
10 Verification Page for those?

11 A I did.

12 Q Did you search for documents
13 responsive to the document requests?

14 A I did.

15 Q All right. Did anyone else help
16 you search?

17 A Yes.

18 Q And who helped you?

19 A My assistant, Lindsay Smith, the
20 HR Director, Rachel Lemmel, probably Mandy Huddleson.

21 Q And who is Mandy Huddleson?

22 A She was the Office Manager at
23 Kings Dodge. She's now head of the Payroll Department
24 at Kenwood Dealer Group.

25 Q Okay. What were her duties as the

1 Office Manager at Kings Dodge?

2 A Essentially keep the books, prepare
3 the financial statement, oversee payables and
4 receivables, do the payroll.

5 Q Did she help employees with things
6 like medical leave or vacation time off or leave time
7 off?

8 A Not really. That was a HR
9 function.

10 Q Okay.

11 A Now, she would account for those
12 things as they impacted payroll I mean, so there's an
13 interaction there between Mandy and Rachel, but Mandy
14 didn't have any authority to grant leave or to extend
15 leave or to give vacation.

16 Q Where is Rachel's office?

17 A It's at headquarters.

18 Q All right. So Mandy was in the
19 dealership at Kings Dodge; correct?

20 A Yes.

21 Q Did salespeople and other staff
22 tend to talk to Mandy about things like medical leaves
23 since she was the person there at the store?

24 A You would have to ask them.

25 Q Okay. Why was Mr. Holloway's

1 employment terminated on January 13th of 2015?

2 A Mr. Holloway was terminated because
3 we knew that he was going to be gone for an extended
4 period of time, and to hold his job open for that
5 extended period of time would just be unreasonable.

6 It was going to be -- He had already been off for
7 three months and all indications were that he would be
8 gone another three to six, seven, months totaling, you
9 know, 9, 10, 11 months. It's unreasonable to keep a
10 job open that long.

11 Q Are you familiar with -- We talked
12 about your going to some seminars, a lot of CLEs that
13 are primarily labor and employment -- You said some of
14 them touch on the Americans With Disabilities Act.
15 Are you familiar with the idea that the Americans With
16 Disabilities Act requires as a potential accommodation
17 a leave of absence for an employee?

18 A Yes.

19 Q All right. Are you aware that the
20 Sixth Circuit has said that a leave of absence up to a
21 year is a reasonable accommodation?

22 MR. CORNETT: Objection. Go ahead.

23 Q You're familiar with the
24 Sixth Circuit Court of Appeals -- You know what its
25 purpose --

1 A I have heard of them, yes.

2 MR. CORNETT: I am just objecting
3 to the characterization, but that's okay.
4 We're not going to fight about it.

5 A I'm also -- I'm also aware that our
6 most recent appointee to the Supreme Court of the
7 United States says that anything beyond six months is
8 unreasonable.

9 Q Well, but his work on the
10 Tenth Circuit you would agree doesn't really matter in
11 Ohio; does it?

12 A Well, I think his position in the
13 Supreme Court matters a lot.

14 MR. CORNETT: We're also just
15 arguing, so --

16 THE WITNESS: Yeah.

17 BY MR. BUTLER:

18 Q Did you give any consideration to
19 the fact that Kings Dodge owed Mr. Holloway an
20 accommodation of a leave beyond what the FMLA
21 dictates?

22 A We probably would have given some
23 consideration if he had asked for one. He never asked
24 for any kind of accommodation ever.

25 Q So did he ever tell someone at

1 Kings Dodge that he was going to be on leave for
2 longer than the end of the 12 weeks?

3 A He may have told someone that he
4 was going to be on leave for longer, but he didn't ask
5 for any accommodation ever.

6 Q And on what do you base that?

7 A The fact that he didn't ask for an
8 accommodation ever.

9 Q Well, how do you know he didn't ask
10 for an accommodation?

11 A He told us.

12 Q Well, he said that he said -- His
13 testimony earlier was, "I need more time off of work."
14 You don't consider that a request for an
15 accommodation?

16 A Well, if that's a request for
17 accommodation it must be followed up with some
18 reasonable estimate of what that time would be.

19 Q Are you familiar with the concept
20 of the interactive process?

21 A Yes, I'm familiar with interactive
22 process.

23 Q Do you know if anyone at
24 Kings Dodge ever asked him how long he would be off
25 work?

1 A I don't know that. I know he
2 didn't offer any time. What possible answer can a
3 Kings Dodge employee -- Incidentally Mandy Huddleson
4 wouldn't be the person anyway. He didn't ask the
5 right people. He knew who his boss was. It wasn't
6 Mandy Huddleson. Any other time he needed something
7 he went straight to Mark Pittman or Rod Stancliff, but
8 unfortunately in this particular instance he goes to
9 Mandy Huddleson who has no authority to do anything.

10 But getting back to your question,
11 there has to be some reasonable anticipated date --
12 You know, you have to say what is it that you want --
13 and he never ever told us that.

14 Q Does Mr. Pittman have authority to
15 grant a leave of absence to an employee?

16 A Absolutely.

17 Q He doesn't have to check with
18 anyone else?

19 A He doesn't have to, no.

20 Q Okay. Does Kings Dodge's handbook
21 indicate to whom a person should request -- address a
22 request for a leave of absence?

23 A Honestly I don't know. I would
24 have to pick it up and read it. I am not sure.

25 Q Take a look at Exhibit 10.

1 A (Reviewing document.) Okay. Thank
2 you.

3 Q At the bottom it does not indicate
4 that you were copied on this letter, but did you
5 receive a copy of it?

6 A I didn't receive a copy at that
7 time. I have since, of course, received a copy of it.

8 Q If Mandy Huddleson isn't involved
9 in this process, why was she copied on this letter?

10 A Payroll. She would prepare -- You
11 know, she has to be aware of when someone's going to
12 be at work and not going to be at work.

13 Q If Mr. Holloway was asking
14 Ms. Huddleson questions about leave of absence or
15 informed her that he needed an additional leave of
16 absence, should she have told him to talk to somebody
17 else?

18 A That will be her testimony.

19 Q Are you aware of Ms. Huddleson
20 informing anyone else at the dealership that
21 Mr. Holloway had talked to her about his need for a
22 leave of absence beyond what the FMLA covered?

23 A Yes.

24 Q And who did she inform of that?

25 A Rachel Lemmel.

1 Q Did Ms. Lemmel reach out to
2 Mr. Holloway about his discussion with Ms. Huddleson
3 indicating that he needed an additional leave of
4 absence?

5 A Not that I'm aware of.

6 Q Is there any reason she didn't?

7 A Because she had been informed that
8 he was going to be gone for an extended period of time
9 beyond what would be reasonable. If Mr. Holloway had
10 asked for two weeks or three weeks or a month, six
11 weeks, Mrs. Lemmel would have granted that or would
12 have set that up for him.

13 Q Who informed her of that?

14 A Informed who?

15 Q Ms. Lemmel that he needed an
16 extended leave that could have been 11 months?

17 A Well, I don't know -- I believe it
18 came from Mrs. Huddleson who got it from Mr. Holloway
19 that he was going to be gone an extended length of
20 time, but we were never -- or Mrs. Lemmel was never
21 given the opportunity to discuss the amount of time.
22 The whole thing -- This whole problem is there was
23 never any time discussed.

24 Q Okay.

25 A So again Mrs. Lemmel will tell you

1 if he had come to her and said, "I need two weeks,
2 three weeks, a month, four weeks," there probably
3 wouldn't have been a problem, but a 10-month job
4 holding, it's just unreasonable.

5 Q How many salespeople does
6 Kings Dodge hire yearly?

7 A Probably -- I don't know. I am
8 going to have to guess, but that's not good. A wild
9 guess would be maybe 20. I mean there's always a --
10 not a lot of turnover, but there's certainly more
11 significant turnover at the low end than there is at
12 the top end.

13 Q Okay. So 20 salespeople a year
14 Kings Dodge hires, and it couldn't hold -- it couldn't
15 just hold Mr. Holloway's position open for him for
16 when he returned and bring him back when there's that
17 high of a turnover?

18 A You're talking 10 months.

19 Q Well, explain to me why that's
20 unreasonable?

21 A It's just too long.

22 Q Other than with the conclusion of
23 it's too long, explain to me why it's too long? You
24 said, "It's too long." I understand that's your
25 position. Explain to me why it's too long to hold a

1 position for a 15-year employee when there is a
2 turnover of approximately 20 salespeople a year?

3 A Okay. 20 may not be accurate.
4 That was a guess; okay.

5 Q 10 or 15 a year.

6 A Okay.

7 Q Why is holding a job for 10 months
8 too long for someone who's been there 15 years?

9 A Well, the 15 years doesn't really
10 entitle the person to a job return or to be rehired.
11 The primary reason Mr. Holloway wasn't rehired is that
12 he wasn't a top performer. We didn't -- The whole
13 transition occurred from the time he left in 2014 when
14 he went on Family Medical Leave. By the time we got
15 to January or February of 2015 the dealership had
16 undergone a tremendous loss of sales that slipped from
17 No. 1 in the city down to No. 3. And this is at a
18 time when the industry increased by 28 percent. So we
19 were going backwards.

20 The General Manager decided that he
21 had to rebuild the Sales Department so we got rid of
22 Mr. Stancliff, brought in Mr. Carmichael.
23 Mr. Carmichael assessed the Sales Department, got rid
24 of AutoBase, brought in DriveCentric, and began a
25 search for salespeople that could be top performers,

1 and my definition of a top performer is 20 plus cars
2 per month, so by the time we get to Mr. Holloway
3 trying to come back in August, Mr. Carmichael looks at
4 Mr. Holloway's last five years of performance and he
5 sold 9 cars a month. He's a nice man. He's probably
6 a good person. But he still sold 9 cars a month.
7 There was no reason for Mr. Carmichael to take back
8 someone that was doing 9 cars a month because he would
9 never have improved the Sales Department that way --

10 Q Okay.

11 A -- and he was charged with that
12 responsibility.

13 Q All right. Well, I appreciate that
14 explanation, but none of it answered my question.

15 My question is why was it
16 unreasonable to hold a job for 10 months? That
17 decision was made at the time he was terminated in
18 January. It had nothing to do with what happened
19 after January. So my question is again why is it
20 unreasonable to not hold a job for someone for 10
21 months when there is that level of turnover?

22 A I don't know that there's a reason
23 you can articulate other than the fact that it's just
24 way too long.

25 Q Okay.

1 A I mean you can't have that much
2 indefiniteness in your employee count. I mean you are
3 always going to have a -- You're going to wait 10
4 months to see if somebody comes back? You have to do
5 business. You have to hire people. You have to have
6 the floor covered. So regardless of what your
7 turnover is, you still need to have the
8 representatives on duty to take care of your
9 customers, and to leave a gap for 10 months that's
10 just unreasonable. It's just too long.

11 Q Is the number of salespeople at
12 Kings Dodge set in stone or does it fluctuate?

13 A Well, I don't think anything is set
14 in stone, but you have to be careful that you don't
15 have too many or too few, and the seasons also dictate
16 how many you should have. You know, during the winter
17 you can get by with less than during the summer.

18 Q Okay. So if the sales staff
19 fluctuated between 13 and 17 and you have a turnover
20 of -- As you said, your guess was 20 -- Even if it's
21 10, that means you're hiring someone at least almost
22 once a month. Why is it unreasonable to not just
23 assume that, "When Mr. Holloway is ready to come back
24 his job will be here waiting for him and we'll take
25 him back because we know there's an opening" -- And I

1 am talking about not what happened after the decision
2 to terminate him was made -- I am talking about at the
3 time the decision to terminate him was made?

4 A To make sure that I understand your
5 question you're saying that in January when we
6 terminated his employment you're asking me if --
7 you're asking me why it's unreasonable not to hold his
8 job for another eight months?

9 Q Yes.

10 A Because you now have a vacant spot
11 in your -- You're always one person light then in your
12 sales staff; aren't you? You're going to be one
13 person light. If you're going to hold a job for him,
14 you're going to be one person light the entire eight
15 months.

16 Q How many people that start at
17 Kings Dodge are out within three months? Is that
18 pretty common?

19 A I don't know. I mean it's not
20 terribly common. You know, it depends. You can hire
21 two salespeople and they might be the best and they
22 might be gone shortly after that. There's really no
23 way to quantify that.

24 Q Okay. And if there's no number set
25 in stone, how are you one person light if the sales

1 staff fluctuates?

2 A Well, if you have to hold a spot
3 for somebody for eight months you're one person light.

4 Q Okay.

5 A You're always one person light.

6 MR. BUTLER: Mark this as

7 Exhibit 19.

8 (Plaintiff's Exhibit 19 was marked
9 for identification.)

10 BY MR. BUTLER:

11 Q All right. Mr. Reichert, you have
12 been handed Exhibit 19. Are you familiar with this
13 email?

14 A Yes.

15 Q It does not appear that it was sent
16 to you. Do you recall -- Well, do you recall when you
17 first saw it?

18 A Probably after Rick filed his EEOC
19 complaint.

20 Q Okay. This says, "When an employee
21 does not return" -- It's in the first paragraph --
22 "When an employee does not return after his maximum
23 time of job protection under the law, he is considered
24 a voluntary resignation per the Employee Handbook."

25 Is that the rule at Kings Dodge?

1 A Well, the Employee Handbook says
2 what it says and, yes, if someone doesn't return, they
3 don't communicate with us, we don't know where they
4 are, then they're considered a voluntary quit, the
5 same as somebody who doesn't show up for three days
6 during the week, they don't show up, they don't
7 communicate with us, we consider that they quit.

8 Q Well, Mr. Holloway didn't fail to
9 communicate with Kings Dodge; did he?

10 A No. He communicated, but he
11 communicated that he wasn't going to return on that
12 date.

13 Q Okay. And because he couldn't
14 return at the end of 12 weeks of FMLA leave he was
15 considered a voluntary resignation?

16 A Well, that and -- We have been over
17 this before -- but because he said he's going to be
18 gone for an extended period of time. He didn't ask us
19 for a week or two weeks or 10 days. He had an
20 indefinite period.

21 Q Well, that's not what this email
22 says. The email says because he didn't return after
23 his maximum time of job protection he's considered a
24 voluntary resignation per the Employee Handbook -- Is
25 that incorrect or is that correct?

1 A Well, it says what it says, you
2 know.

3 Q I am asking if that's correct, the
4 actual policy at Kings Dodge?

5 A The policy is correct insomuch
6 as -- And you have to interpret the policy. The
7 policy says, "If you don't return or you don't tell
8 us," you know, "what you're doing or you don't
9 communicate with us, we don't hear from you, you don't
10 come back, we assume you quit just like any other time
11 frame."

12 Q But you did hear from him, so
13 that's what I'm trying to --

14 A Well, we heard from him that he
15 wasn't coming back until -- He didn't know.

16 Q Okay. Well, this says "6+ months
17 (based on his time out from the first surgery)", a
18 total -- It would be another three roughly -- Is that
19 about right?

20 A That's what it says.

21 Q Okay.

22 A But it turned out it was 10.

23 Q All right. In the third paragraph
24 it says, "If you have an advertised opening and he
25 decides to apply (even though this sounds like it

1 would not be until late April), you need to be sure he
2 has a doctor's release stating he is able to stand all
3 day and walk the lot." Why was he being required to
4 have a doctor's release?

5 A Well, that's a standard requirement
6 when anyone goes out on FMLA leave. We don't want
7 them to attempt to come back when the doctor has said
8 they're not fit to work.

9 Q Okay. But he was terminated, so he
10 was no longer an employee and the FMLA no longer
11 applied; correct?

12 A Well, but we also knew -- we also
13 knew that he had a hip replaced and we're not going to
14 take him back if he's going to injure himself.

15 Q Are other applicants required to
16 present doctors' notes showing they're fit for work at
17 Kings Dodge?

18 A If they have been out on FMLA, yes.

19 Q That wasn't my question.

20 Are other applicants --

21 MR. CORNETT: He answered you;

22 didn't he?

23 THE WITNESS: Yeah, I think I just

24 did.

25

1 BY MR. BUTLER:

2 Q Are other applicants at Kings Dodge
3 required to present doctors' notes?

4 A Under what circumstances?

5 Q Under any circumstances.

6 Is every applicant at Kings Dodge
7 required to present a doctor's note?

8 A No, not every applicant.

9 Q Are there any other than
10 Mr. Holloway that are required to present doctors'
11 notes?

12 A Well, of course, there are.

13 Q Give me an example of an applicant
14 at Kings Dodge who's been required to present a
15 doctor's note?

16 A Anyone who was sick or injured
17 prior to their application and that sickness or injury
18 caused them to be unable to work, regardless of
19 whether they were on FMLA or whether they were
20 Worker's Comp or whatever they were -- If they were
21 sick or injured that prevented them from working, we
22 have to have a doctor tell us that they're fit to work
23 again.

24 Q Okay. It also says, "You should
25 not hire him with restrictions as it would not work in

1 a sales position." Why would Kings Dodge not accept
2 him if he had restrictions?

3 A Well, the restriction that she's
4 referring to is in the next sentence. It has to do
5 with part time.

6 Q Okay.

7 A That's self-explanatory. We don't
8 hire part-time salespeople.

9 Q All right. Well, it doesn't say
10 that. It says, "You should not hire him with
11 restrictions"?

12 A Well, again you have to read the
13 whole photograph. "The company does not approve
14 part-time salespeople." If she were here today she
15 would tell you that's exactly what she meant and
16 that's exactly what that sentence meant.

17 Q Do you know if Ms. Lemmel ever
18 discussed Mr. Holloway's leave or termination with
19 him? Did she have any conversations with Mr. Holloway
20 to your --

21 A To the best of my knowledge they
22 never conversed.

23 Q Okay. Tell me what you know about
24 Mr. Holloway's efforts to return to Kings Dodge in
25 August of 2015?

1 A I received a call from -- I can't
2 remember if it was Mr. Pittman or Jeff Carmichael --
3 but I had a discussion with both of them about
4 Mr. Holloway's return, and I was the one that said we
5 weren't going to rehire him --

6 Q Okay.

7 A -- and the reason, as I explained
8 earlier, that the Sales Department is being rebuilt.
9 Mr. Carmichael had moved the Sales Department back
10 from No. 3 in the city -- He had just gotten back to
11 No. 1. He was doing this with, you know, a number of
12 things, but the one thing he didn't want to do was to
13 reintroduce into the Sales Department someone who sold
14 9 cars a month. He's looking for people who can sell
15 a lot more, and he may have to go through a couple of
16 people without experience -- He used a
17 Predictive Index Test to determine these unexperienced
18 people's ability to sell -- and then he would train
19 them, and sometimes you go through two or three, but
20 if he can get a 20-car-a-month person it would be
21 worth the effort.

22 All we knew is that as nice a guy
23 as Mr. Holloway is and as good a person as he is, for
24 the last five years he sold 9 cars a month. He sold 9
25 cars a month when the industry increased 28 percent

1 and Chrysler's share even increased more than that, so
2 we were going to get another 9-car-a-month guy, and
3 that just -- that just didn't fit into the plan.

4 Q Did everyone's numbers go up when
5 Mr. Carmichael started?

6 A Every salesperson's numbers?

7 Q Yes.

8 A I don't know. I haven't -- I
9 didn't look at that statistic. But the dealership's
10 total numbers went up and we returned to the No. 1
11 sales position in the city -- I believe it was in
12 October or November of 2015.

13 Q All right. Are you aware of how
14 Mr. Holloway reached out to someone at Kings Dodge
15 about coming back to work -- Do you know how that
16 happened?

17 A Mr. Pittman -- Only what
18 Mr. Pittman told me. Mr. Pittman said Rick contacted
19 him and said he wanted to come back to work.

20 Q All right. Are you aware of
21 Mr. Holloway contacting Mandy about coming back to
22 work?

23 A No.

24 Q Are you aware of Mandy asking him
25 for a doctor's note?

1 A No. I had no reason to believe
2 that didn't happen, but I am not aware of that. I was
3 unaware of that.

4 Q Did Mr. Pittman or Mr. Carmichael
5 offer an opinion on whether or not Mr. Holloway should
6 be rehired?

7 A They did.

8 Q All right. What were their
9 opinions?

10 A No.

11 Q Both of them?

12 A Yes.

13 Q Did they tell you why they did not
14 believe he should be rehired?

15 A Mr. Carmichael was more adamant --
16 Mr. Carmichael in fairness never worked with
17 Mr. Holloway, but he did inquire amongst the people
18 that worked there, and even beyond that he looked at
19 the statistics, and again these statistics are 9 cars
20 a month --

21 Q Okay.

22 A -- over five years. It's a pretty
23 compelling statistic.

24 MR. BUTLER: Let's mark this as 20.

25

1 (Plaintiff's Exhibit 20 was marked
2 for identification.)

3 BY MR. BUTLER:

4 Q Do you recognize this document?

5 A I do.

6 Q Did you draft it?

7 A I did.

8 Q This is the Position Statement for
9 the EEOC?

10 A Yes.

11 Q Do you know when you drafted it?

12 It does not appear to be dated.

13 A It would be sometime early in 2016.

14 Q All right. Does Kings Dodge have a
15 minimum performance it sets for its employees to sell
16 cars, number of cars per month?

17 A It doesn't have a written numeric
18 performance, no, but there would be a reasonable --
19 reasonableness standard applied. Somebody that sold
20 three cars a month would obviously not continue to be
21 employed very long.

22 Q You reference two different
23 third-party sources, the Chief Economist for the
24 National Automobile Dealers Association and
25 CarSalesProfessional.com. Are these resources that

1 you regularly would rely on or did you pull these for
2 purposes of responding to this charge of the EEOC?

3 A I pretty much pulled them for the
4 purposes of responding to the charge.

5 Q While the industry standard may be
6 a minimum performance of 10 cars a month, that's not
7 Kings Dodge's minimum performance?

8 A No. We don't have a specific
9 number. It's a reasonable number under the
10 circumstances. How is the industry? How good is the
11 brand? Is a brand enjoying a prosperous time or are
12 we having problems with our product?

13 Q At the bottom of the second page
14 going into the third page there's some discussion
15 about CRMs in general and then it gets into Kings'
16 CRM. There's a mention of AutoBase. Where did you
17 come to the -- How did you reach the conclusion that
18 Mr. Holloway struggled mightily with AutoBase?

19 A From interviews with the managers
20 that worked there when he did.

21 Q And who were those?

22 A Well, that would be Mr. Stancliff
23 primarily.

24 Q Was he the only salesperson that
25 did not use AutoBase?

1 A I don't know.

2 Q Were salespeople required to use
3 AutoBase at the time?

4 A Yes.

5 Q So when he wouldn't use it, there
6 was nothing done formally to discipline Mr. Holloway
7 even though he was required to use it?

8 MR. CORNETT: I don't see anything
9 about not using it.

10 MR. BUTLER: The second paragraph.

11 MR. CORNETT: It says "struggled
12 mightily".

13 MR. BUTLER: "And eventually
14 couldn't or wouldn't use it."

15 MR. CORNETT: Okay.

16 A I'm sorry. What was the question
17 again?

18 Q Was Mr. Holloway ever disciplined
19 for not using AutoBase?

20 A Not that I'm aware of.

21 Q No. 3 it says, "After
22 Jeff Carmichael replaced the primitive and outdated
23 AutoBase CRM with the state-of-the-art DriveCentric
24 CRM, he also changed the sales process to require full
25 use of the CRM by salespersons." That would suggest

1 to me that it wasn't required before when you were
2 using AutoBase, is that correct, that salespeople were
3 not required to use AutoBase?

4 A Well, I think they were required.
5 I don't know that they did it. You know, it's like
6 the speed limit. We're required to go 55 on the
7 expressway, but a lot of times we don't. The
8 requirement was probably there and I don't know how
9 much Mr. Stancliff enforced that requirement.

10 Q All right. Mr. Pittman replaced
11 Mr. Stancliff in February of 2015. Did Mr. Stancliff
12 leave the organization or was he sent to a different
13 dealership?

14 A He was demoted to a salesperson.
15 He's selling Fords at Northgate Ford.

16 Q Okay. You wrote, "When
17 Mr. Holloway applied for the open position in August
18 of 2015, the salesperson ad stated that no experience
19 was necessary, and the dealership offered paid
20 training for the new salesperson," and you go on to
21 say that, "his previous inability to function with a
22 primitive CRM would only be exacerbated with
23 DriveCentric." Who came to that conclusion.

24 A I did.

25 Q Were you familiar with DriveCentric

1 and how it was operating at the dealership at that
2 time when Mr. Holloway asked to come back in August?

3 A Well, I was certainly aware of the
4 fact that DriveCentric was considerably more
5 sophisticated and more difficult to use than AutoBase.
6 Again I didn't use it myself, but all the people who
7 were on the committee to select DriveCentric, you
8 know, reported to top management how it worked, what
9 they thought about it, how it compared to the other
10 CRMs we had, so I drew my information from those
11 reports.

12 Q That they had used -- they had been
13 using DriveCentric for a while and how it was more
14 complicated than AutoBase or --

15 A Well, they had people come in and
16 give demonstrations of various CRMs and DriveCentric
17 was chosen over several, but this was about a
18 four-month process --

19 Q Okay.

20 A -- and those who made the decision
21 to do DriveCentric would report to the top management
22 on probably a bi-weekly basis what they saw, what kind
23 of product so and so was offering, how it compared to
24 the other products, and that's where I got my
25 information.

1 Q Did you talk to anyone else at the
2 facility about whether or not they thought
3 Mr. Holloway could use DriveCentric?

4 A Well, I don't think I ever asked
5 anybody if Mr. Holloway could use DriveCentric. I
6 asked them how he did with AutoBase because he wasn't
7 there when DriveCentric was installed.

8 Q Okay. Did you ask people how they
9 thought he would do with DriveCentric because they had
10 been using DriveCentric and they had also used
11 AutoBase and then they could draw a comparison in how
12 it was easier or harder to use?

13 A Well, again the reports from those
14 who interacted with the vendor pretty much said that
15 DriveCentric was going to be -- It was much more
16 sophisticated and it would require more of a computer
17 savvy individual to use it and that the people who
18 worked with Mr. Holloway said that he struggled with
19 AutoBase, so it's a logical conclusion if you struggle
20 with the primitive CRM you're obviously not going to
21 be adept at the more sophisticated CRM.

22 Q Did it ever occur to you that
23 perhaps the primitive CRM in addition to being less
24 useful was also harder to use?

25 A Not according to the people that

1 use it every day. The reason that AutoBase was chosen
2 to begin with was that it was so easy to use. Those
3 are the very words that the committees reported to me?

4 Q Who's the committee?

5 A It was Jeff Carmichael, my son,
6 Dan Mercurio, and maybe Bob Uzer -- I am not sure
7 about the fourth person.

8 Q Have any of the staff at Kings
9 complained that they can't use DriveCentric, that it's
10 too hard to use?

11 A Not to me they haven't.

12 Q You're not aware of any complaints
13 being made?

14 A I probably wouldn't get them,
15 though, to be honest with you.

16 Q What caused you to ask
17 Rod Stancliff about Mr. Holloway's ability to use CRM
18 software when you were considering whether or not to
19 rehire him?

20 A Well, the overriding factor in not
21 rehiring Mr. Holloway was the 9 cars a month, and sort
22 of maybe in mitigation is there any other thing we
23 should look at, you know, is he a superstar with a
24 computer, is there something else we should consider
25 before we say "no", and that's what caused it, but the

1 real reason we didn't hire him is -- He's a nice guy.
2 He's a good person. There's nothing wrong with him as
3 a person. I actually like him as a person really. I
4 mean that sincerely. I do like him as a person. But
5 it's 9 cars a month, and 9 cars a month won't get the
6 job done for us. It just won't. We need
7 20-car-a-month people and you can't run a dealership
8 if your average guy is selling 9 a month, not in this
9 day and age.

10 Q All right. Turn to Exhibit A of
11 the Position Statement. There are two charts on this
12 page and the second one is Salespersons Hired In 2015.
13 There's also a list of people who left Kings Dodge in
14 2015.

15 A Okay.

16 Q Did you compose this list?

17 A I think Mrs. Lemmel composed this
18 list.

19 Q Do you know what the purpose of
20 providing that list was to the EEOC?

21 A It was one of the things they
22 requested.

23 MR. BUTLER: Okay. Mark this as
24 Exhibit 21.

25

1 (Plaintiff's Exhibit 21 was marked
2 for identification.)

3 BY MR. BUTLER:

4 Q This list was provided to us in
5 discovery. Do you recognize this?

6 A Yes.

7 Q This is a list of people hired at
8 Kings Dodge?

9 A I think this is the list of current
10 employees; isn't it?

11 Q I have no idea. It was provided to
12 us without an explanation. I mean plenty of them have
13 been terminated, so I doubt it's current employees.

14 A Well, this was provided in response
15 to an Interrogatory request of some sort. It might
16 be -- I would have to look back at the
17 Interrogatories.

18 Q Well, I want to go through it with
19 you because the lists don't really match up. The list
20 you provided to the EEOC seems to be missing quite a
21 few people.

22 A Well, these aren't -- these aren't
23 salespersons as you can tell.

24 Q Well, it does say what they were
25 hired into --

1 A Right.

2 Q -- and we'll go through it.

3 Sherry Tarter, New Vehicle Sales,
4 hired 1/20, she's on the list. Jordan Jraisat hired
5 2/10 -- It appears to mean sales?

6 A Yes, they are.

7 Q And then there's Christian Pieratt
8 who's Vehicle Sales hired 2/11 who's not on the list
9 sent to the EEOC.

10 A Well, but the EEOC list predated
11 this.

12 Q Well, it says "Salespersons Hired
13 in 2015". Christian Pieratt was hired on 2/11/2015.

14 A Okay.

15 Q I think they're in order here, so
16 Pieratt and the next one under that is Haley Wolf also
17 New Vehicle Sales 2/12/2015.

18 A Okay.

19 Q Go down a few. There's a
20 Jeffrey Parris hired on 5/18/2015 as New Vehicle
21 sales. Lawrence Bunger is on the list and then if we
22 go further down there's a Patrick McGrath hired on
23 August 8, 2015, New Vehicle Sales.

24 MR. CORNETT: Basically getting to
25 the punch line here your question is why are

1 the lists different?

2 MR. BUTLER: Yeah, why they were
3 left off.

4 BY MR. BUTLER:

5 Q Do you know why they were left off
6 what you provided to the EEOC?

7 A I'd have to look back at what the
8 EEOC asked in terms of -- These people may all be
9 minorities. Again I'm not sure.

10 Q Do you know any of these
11 individuals?

12 A Well, I know who Jordan is,
13 Jordan Jraisat. I know who Sherry Tarter is. I don't
14 know the other two.

15 Q Okay.

16 A And I'm not sure what the request
17 from the EEOC was. If it had to do with -- I am not
18 even sure the race of these last two people.

19 Q All right. Well, is Sherry Tarter
20 white?

21 A Yes --

22 Q Okay.

23 A -- she is. Jordan is not. I don't
24 know Lawrence Bunger and I don't know Andrie Scott.
25 And I'm just speculating as to why there would be a

1 difference in the list.

2 Q The bottom of the list,
3 Paul Schoenhof, is he related to Robert Schoenhof?

4 A Yes.

5 Q All right. And he previously
6 worked for the -- any of the dealerships you owned?

7 A No.

8 Q Did he get hired based in part on
9 his relationship to one of the owners?

10 A I'd like to think not, but --

11 Q Probably?

12 A Probably.

13 Q Anyone else on this list that was
14 hired based on a relationship with one of the owners
15 that you're aware of?

16 A No. Actually our policy is, you
17 know, not to hire relatives -- or not to have them
18 work in the same dealership, I should say.

19 Q Does Robert Schoenhof and
20 Paul Schoenhof work at the same dealership?

21 A No, no. Mr. Paul Schoenhof is at
22 the Dodge store and Robert is at the Toyota store.

23 Q It appears that the average age of
24 the individuals hired in the sales positions is
25 35-years-old, 35 1/2, if you exclude Mr. Schoenhof.

1 Is that younger than the average age that the sales
2 staff was at the time Mr. Carmichael took over?

3 A I doubt it. Actually we have much,
4 much better results from older people. Our top -- Our
5 top four salespeople in the whole company are 52, 55,
6 57, and 64. Even the people below that, the 50 plus
7 people, do much better than the young people.

8 Q If you turn to the next page of
9 your Position Statement, this appears to be a list of
10 people who were hired before 1/1/2015 who are
11 employed --

12 A Uh-huh.

13 Q -- which is just before
14 Mr. Carmichael took over.

15 A Right.

16 Q And it looks like there is only one
17 person on that list under the age of 35 and that would
18 be Chad Johnson. In fact, there's no one even under
19 40 on that list other than Mr. Johnson, yet the
20 average age of people hired in 2015 and 2016 is 35.
21 Does that strike you as a change to go from one person
22 under 40 to an average of 35?

23 A Where are you getting that average
24 age?

25 Q Well, if you add up all the people

1 hired in the sales positions based on your description
2 here.

3 A Well, I can tell you this -- And I
4 don't know that I can confirm what you just said --
5 but statistically we do much better with people over
6 50.

7 Q That may be, but that's not who's
8 being hired according to your numbers, your data.

9 A Where are you --

10 Q Well, you're free to add them up.

11 MR. CORNETT: I mean I guess we
12 could take an average age if that's what you
13 want. I mean --

14 Q I have got salespeople,
15 Sherry Tarter, 51?

16 A She's 51, okay, so she's over 35.

17 Q Okay. Jordan Jraiset 31.

18 A All right. Christian Pieratt 53.

19 Q 53.

20 Haley Wolf is 20.

21 A Haley Wolf is not a salesperson.
22 That would be a support person.

23 Q It says "New Vehicles Sales".

24 A I know what it says, but she's in
25 that department. That doesn't mean she's selling

1 cars.

2 Q What is her position?

3 A She was a receptionist, support
4 person, clerical person, not a salesperson.

5 Q Jeffrey Parris 38, Lawrence Bunger
6 39, Patrick McGrath 27, Andrie Scott 24,
7 Michael Hartman 28, Heather Jamison 35,
8 Michael Nolan 58, and Christopher Vaske 26.

9 A And Paul Schoenhof 51.

10 Q Okay. We established he was hired
11 because he's a relative.

12 A He wasn't hired because of that.
13 That was his --

14 Q All right.

15 A -- entree into the company.

16 Q His brother is an owner?

17 A His brother is a shareholder.

18 Q His brother is a shareholder?

19 A Yeah.

20 Q Okay.

21 A Well, we still hired him and he
22 fits the demographic of our most successful
23 salespeople.

24 Q Okay. How old is Jeff Carmichael?

25 A 34.

1 Q All right. And he's a shareholder?

2 A Yes.

3 Q Did he acquire his shares from his
4 father?

5 A Yes.

6 Q Did he hold any positions in the
7 dealer group prior to becoming the New Car -- Was it
8 New Car Sales Manager at Kings Dodge he became on --

9 A Yes. He's worked there since he
10 was in high school.

11 Q Okay. What position did he hold
12 prior to becoming the New Car Sales Manager at
13 Kings Dodge in 2015?

14 A He was a salesperson. He was a lot
15 tech. He was a porter. He was -- He started working
16 there in high school, you know, sweeping the floors,
17 emptying the trash, and he worked virtually every
18 position on up.

19 Q Immediately to becoming the New Car
20 Sales Manager what was his position?

21 A I think he was probably a
22 Leasing Manager at Kings Toyota.

23 Q Okay. Was AutoBase in use when
24 Mr. Holloway started?

25 A I don't know. I doubt it.

1 Q Do you know if any training was
2 provided to Kings Dodge staff on the use of AutoBase?

3 A I don't know.

4 Q Were all new staff trained on how
5 to use DriveCentric?

6 A As far as I know they were, yes.

7 Q Did DriveCentric provide trainers
8 to come in and do it?

9 A Yes.

10 Q Do you know if that was done with
11 AutoBase?

12 A AutoBase was there 10 years ago. I
13 just don't know.

14 MR. BUTLER: Why don't we take a
15 quick break.

16 MR. CORNETT: Okay.

17 (Deposition stood in recess at
18 3:17 p.m.)

19 (Deposition reconvened at
20 3:32 p.m.)

21 MR. BUTLER: Just a few follow-up
22 questions for you, Mr. Reichert.

23 BY MR. BUTLER:

24 Q If Mr. Holloway had not gone on a
25 leave of absence and had remained at the dealership

1 would he still be there assuming he didn't leave on
2 his own volition selling 9 cars a month?

3 A Probably not.

4 Q He would have been terminated
5 because of his sales volume?

6 A Probably. Obviously we're
7 speculating -- I can't tell you for sure -- but I
8 would say there's a better than even chance that would
9 have happened given the reformation of the
10 Sales Department.

11 Q Okay. Is Bill Craig still there?

12 A He is.

13 Q He sold 7.2 cars a month?

14 A He does. He would be our low
15 person, but he also has intermittent medical issues.
16 He doesn't really work full time all the time, and
17 he's certainly a person if he left we would never
18 rehire him.

19 Q Bryan Cammett sells 8.7 cars a
20 month and he's still there?

21 A I think Bryan's got other duties;
22 doesn't he?

23 Q I don't know.

24 A A couple of those people have other
25 duties.

1 Q It looks like that would be
2 Don Pelfrey.

3 A Well, Pelfrey's gone.

4 Q When did he leave?

5 A Some time ago. I can't tell you --
6 Well, 2017.

7 Q Did he leave on his own accord or
8 was he terminated?

9 A I don't know. I believe he was
10 terminated, but I am not positive.

11 Q J. Ford Smith 8.09 cars a month
12 since 2010. Still there?

13 A Yes.

14 Q He wasn't terminated for low
15 performance?

16 A No.

17 Q Andrie Scott 9.4 cars a month, he
18 wasn't terminated for low performance?

19 A He's gone.

20 Q He is gone?

21 A Uh-huh.

22 Q When did that happen?

23 A Again I'm not sure, but I know he's
24 gone.

25 Q Do you know if he was terminated or

1 if he quit?

2 A I do not. I believe he was
3 terminated, but I am not 100 percent sure.

4 Q Now, you mentioned you considered
5 good performance to be 20 cars a month. According to
6 Exhibit 12 you only have two people that are even
7 remotely close to 20 cars a month. The next closest
8 is Jordan Jraisat at 16.2.

9 MR. CORNETT: Well, two that are
10 significantly above.

11 MR. BUTLER: Two that are
12 significantly above and no one else is even
13 close.

14 BY MR. BUTLER:

15 Q How does that happen?

16 A Well, that's why we're trying to
17 rebuild the Sales Department.

18 Q Okay.

19 A There's the evidence right there.

20 Q But all these people are still
21 there?

22 A Well, you can't operate without any
23 salespeople and it's difficult to get good people, so
24 we do the best we can.

25 Q Ben Skolnick on this, it says "NGF"

1 on Quit/Fired. What does that mean?

2 A It means that he went to
3 Northgate Ford.

4 Q Okay.

5 A He got transferred.

6 Q All right. Do salespeople move
7 around within the dealer group often?

8 A On occasion. It's not -- It's not
9 a high volume, but they do, yes.

10 Q Okay. Was Mr. Holloway, for
11 example, was he an employee of Kings Dodge or of
12 Kenwood Dealer Group?

13 A Kings Dodge.

14 Q Does anyone that works in
15 Kings Dodge on a daily basis or primarily an employee
16 of Kenwood Dealer Group?

17 A No.

18 Q All right.

19 A Kenwood Dealer Group simply
20 provides services to the dealerships.

21 Q Okay.

22 A It does have employees, but they're
23 all administrative employees.

24 Q So it's administrative services it
25 provides, HR and --

1 A Right.

2 Q -- payroll?

3 A Payroll and outstanding legal
4 service.

5 Q It's a joke I have heard a time or
6 two about -- What is it -- if you represent
7 yourself --

8 A Right, you have a fool for a
9 client. Yeah, I have heard that joke too. In this
10 case it's probably true.

11 Q Mr. Holloway was questioned about a
12 loan for \$516 he got from Kings Dodge. Was that
13 something that Kings Dodge offers to its employees?

14 A No.

15 Q And do you know how that came to
16 pass?

17 A I have no idea.

18 Q I mean it looked like it was a form
19 that had been used before.

20 A Hopefully not often. I would tell
21 you that was probably done without my knowledge.

22 Q Okay. Who would have the authority
23 to authorize something like that?

24 A Mr. Pittman.

25 MR. BUTLER: I think those are all

1 of my questions.

2 MR. CORNETT: We want signature.

3

4

ROBERT C. REICHERT

5

6 (DEPOSITION CONCLUDED AT 3:38 P.M.)

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C E R T I F I C A T E

STATE OF OHIO :
COUNTY OF BUTLER : SS:

I, Pamela L. Jackson, a duly qualified and
commissioned notary public in and for the State of
Ohio, do hereby certify that prior to the giving of
his deposition, the within named ROBERT C. REICHERT,
was by me first duly sworn to testify to the truth,
the whole truth, and nothing but the truth; that the
foregoing pages constitute a true and correct
transcript of testimony given at said time and place
by said deponent; that said deposition was taken by me
in stenotypy and transcribed under my supervision;
that I am neither a relative of nor attorney for any
of the parties to this litigation, nor relative of nor
employee of any of their counsel, have no interest
whatsoever in the result of this litigation, and am
not, nor is the court reporting firm for which I am
affiliated, under a contract as defined in Civil Rule
28(D).

IN WITNESS WHEREOF, I hereunto set my
hand and official seal of office at Hamilton, Ohio,
this 30th day of August, 2017.

Commission Expires: /s/Pamela L. Jackson
11/17/2018 Pamela L. Jackson

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